

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CAROL ANN SMITH,

Debtor.

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CASE NUMBER 04-42367

CHAPTER 7

HONORABLE KAY WOODS

O R D E R

This matter came on for hearing before the Court on August 26, 2004 on the Chapter 7 Trustee's objection to exemption. The Debtor filed a memorandum in opposition to the objection to exemption. Both the Trustee and counsel for the Debtor appeared at the hearing.

The basis for the Trustee's objection was that the Debtor had claimed a homestead exemption in the amount of Four Thousand Dollars (\$4,000.00) with regard to real estate pursuant to O.R.C. § 2329.66(A)(1), but that the Debtor had testified at the first meeting of creditors that she did not reside at the real estate. The Trustee claimed that, because the Debtor did not reside at the real estate, the exemption was inapplicable.

The Debtor responded that she was a married woman as of the date the Chapter 7 petition was filed (*i.e.*, May 14, 2004) and that her spouse had continuously occupied the premises as his personal residence from 1997 to the present. The Debtor claimed that she claimed the homestead exemption not for herself but for her spouse as a "dependent."

This appears to be a case of first impression under the Ohio homestead exemption. The closest case this Court could find on point is *In re Miller*, 157 B.R. 621 (Bankr. N.D. Ohio 1993). In the *Miller* case, the trustee objected to the debtor's claimed homestead exemption for residence at which his dependent children resided. The bankruptcy court held that the debtor was entitled to a Five Thousand Dollar (\$5,000.00) homestead exemption under the Ohio statute in the residence where his dependent children resided, even though the debtor did not himself reside at that residence. In the *Miller* case, the debtor and his wife had filed a joint petition in bankruptcy on November 23, 1992. The debtor and his wife were separated, with the wife living at the residence with the debtor's children at the time the petition was filed. The court found that the children were dependents of the debtor. The debtor wife claimed a homestead exemption in the residence, as well as the debtor. The court held that, because the children lived at the residence at the time the petition was filed and continued to live at the residence, the debtor was entitled to a homestead exemption under O.R.C. § 2329.66 on behalf of his dependent children.

In the present case, Debtor Carol Ann Smith is an individual debtor and her spouse has not filed a bankruptcy petition. The spouse would be entitled to his own exemption in the residence. Despite statements by counsel that the spouse is a "dependent" of the Debtor, there was no evidence presented with

respect to such dependency.

As a consequence, because the spouse would be entitled to his own homestead exemption, because there was no evidence that the spouse was a dependent of the Debtor, and because the Debtor did not reside at the residence at the time the petition was filed nor at any time thereafter, the Debtor's claimed homestead exemption of Four Thousand Dollars (\$4,000.00) on behalf of her spouse is inappropriate. Accordingly, the Trustee's objection to the exemption is sustained.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was placed in the United States Mail this _____ day of August, 2004, addressed to:

CAROL ANN SMITH, 35 Hickory Trace, Girard,
OH 44420.

KEITH M. WALKER, ESQ., P. O. Box 1294, Warren,
OH 44482.

ANDREW W. SUHAR, ESQ., 1101 Metropolitan
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SAUL EISEN, United States Trustee, BP America
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JOANNA M. ARMSTRONG